



Administrative Tribunal

Distr.
LIMITED

AT/DEC/821
25 July 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 821

Case No. 802: AKKAWI

Against: The Commissioner General
of the United Nations
Relief and Works Agency
for Palestine Refugees
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Mikuin Leliel Balanda, Vice-President,
presiding; Ms. Deborah Taylor Ashford; Mr. Julio Barboza;

Whereas, on 9 August 1996, Hassan Akkawi, a former staff
member of the United Nations Relief and Works Agency for Palestine
Refugees in the Near East (hereinafter referred to as UNRWA), filed
an application in which he requested, in accordance with article 12
(now article 11) of the Statute of the Tribunal, the revision of
Judgement No. 732, rendered by the Tribunal on 21 November 1995;

Whereas the application contained pleas which read, in part,
as follows:

"[The] Applicant discovered recently a decisive factor
... proving that declaring his post redundant was ...
purposely meant not to keep him in service ...

[The Applicant] is further confident that the Tribunal
shall take the new factor into consideration, and shall
reconsider its judgement accordingly.

... [the] Applicant is confident that [the] Tribunal
shall urge [the] Respondent to reinstate him as early as
feasible ..."

Whereas the Respondent filed his answer on 22 October 1996;
Whereas the Applicant filed written observations on
15 February 1997;

Whereas the facts in the case have been set forth in
Judgement No. 732.

Whereas the Applicant's principal contention is:

The letter from the Director of UNRWA Affairs, Lebanon, dated
12 June 1996, contradicts the finding in paragraph II of Judgement
No. 732 and, therefore, revision of the foregoing judgement is
warranted.

Whereas the Respondent's principal contention is:

The allegations made in 1995, regarding the Applicant's
conduct while an UNRWA staff member, detailed in the report of the
Board of Inquiry, are irrelevant to the subject matter of Judgement
No. 732 because the two events are temporally and logically
distinct. The Applicant has therefore failed to identify the
discovery of any decisive fact to warrant revision of the Judgement.

The Tribunal, having deliberated from 8 to 25 July 1997, now
pronounces the following judgement:

I. The Applicant seeks revision of Judgement No. 732, pursuant
to article 12 (now article 11) of the Statute of the Tribunal, as
amended by the General Assembly in its resolution 50/54, which was
adopted on 11 December 1995. In Judgement No. 732, which dealt with
the Applicant's termination for abolition of post, the Tribunal
found no "evidence that the decision was prompted by prejudice" but,
due to procedural irregularities, ordered the Respondent:

"(i) To pay to the Applicant six months of his net base salary, at the rate in effect at the time of his separation from service.

(ii) To give the Applicant priority consideration for any post for which he applies and for which he is qualified."

II. The Applicant requests revision of Judgement No. 732 on the basis of the discovery of a "decisive factor ... proving that declaring his post redundant was irrelevant to the post" and was "purposely meant not to keep him in service." The Applicant asserts that this new fact, conveyed to him in a letter dated 12 June 1996, from the Director of UNRWA Affairs, Lebanon, was the establishment of a Board of Inquiry that had been convened in October 1995 and had issued a report alleging misconduct by the Applicant. The Board had requested a response by the Applicant to these allegations. The Commissioner-General declined to take a decision to reemploy the Applicant until the Applicant had provided satisfactory refutation of the allegations against him.

III. The Respondent contends that the establishment of, and allegations made by, the Board of Inquiry are "irrelevant to the subject matter of Judgement No. 732 ... because the two events are temporally and logically distinct."

IV. The Tribunal notes that, in order to prevail on his request for a revision of judgement under article 12 (now article 11) of its Statute, the Applicant must prove "the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence."

V. The Tribunal has examined the letter of 12 June 1996 in the light of its Judgement No. 732, in which it concluded that "whatever

the merits of these reasons [for the abolition of the Applicant's post] on managerial and efficiency grounds are, they do not suggest a basis for prejudice." It finds that, even if it were to agree with the Applicant that the letter informing him of the establishment of the Board of Inquiry was a new fact unknown to the Tribunal and to the Applicant when the Judgement was rendered, it certainly cannot concur that this fact is a "decisive factor" with respect to the subject matter of Judgement No. 732, i.e., the termination of the Applicant's services on the ground of abolition of post. The establishment of a Board of Inquiry in 1995, and the allegations made by it, are irrelevant to the abolition of the Applicant's post in 1992. The establishment of a Board of Inquiry does not, by itself, provide evidence of prejudice that would alter the considerations made in the Tribunal's prior judgement. For this reason, the Tribunal finds that the Applicant has not identified the discovery of any decisive fact that would justify the revision of Judgement No. 732 in accordance with article 12 (now article 11) of its Statute.

VI. The Applicant also appears to contend that the Respondent did not implement the Tribunal's order in Judgement No. 732 to give the Applicant "priority consideration" for recruitment to a new post. He asserts that the establishment of the Board of Inquiry in 1995 was merely an excuse for the Respondent not to fulfil this order. The accusations against the Applicant, contained in the report of the Board of Inquiry (extortion of money from contractors, acceptance of bribes and divulgence of confidential information), are evidence of the Respondent's intentional non-compliance with the order in the Judgement to give him "priority consideration" for posts for which he is qualified. In his written observations, the Applicant requests that the Tribunal take measures of inquiry under article 17 of its Rules.

VII. As to the issue of the Respondent's compliance with the Tribunal's order to give the Applicant priority consideration for posts for which he applies and is qualified, the Tribunal finds that the Applicant may not assert that the Respondent failed to comply with Judgement No. 732, unless he successfully refutes the accusations of misconduct made against him. To accomplish this, the Applicant must follow the applicable procedures and take his case before the appropriate bodies. For this reason, the Tribunal rejects the Applicant's request for measures of inquiry under article 17 of its Rules.

VIII. At this juncture, the Tribunal's jurisdiction is limited to consideration of the request for revision of Judgement No. 732, which, in accordance with paragraph V above, has been rejected.

IX. For the foregoing reasons, The Tribunal rejects the application in its entirety.

(Signatures)

Mikuin Leliel BALANDA
Vice-President, presiding

Deborah Taylor ASHFORD
Member

Julio BARBOZA
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary